

Judge Thomas S. Zilly

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID MENDOZA,

Defendant.

NO. CR06-466TSZ

GOVERNMENT'S FILING  
RE: RULE 15 DEPOSITION

The United States of America, by and through Jeffrey C. Sullivan, United States Attorney for the Western District of Washington, and Susan M. Roe and Roger S. Rogoff, Assistant United States Attorneys for said District, submits this clarification as directed on the issue of taking a Rule 15 deposition in Canada.

The government apologizes that the information regarding the necessary permission was not clearer in its last pleading. The undersigned is not waiting for DOJ approval for the Rule 15 deposition but permission from Canada to perform legal work inside Canada. The process is as follows.

When an AUSA wishes to travel to foreign country to conduct legal work on behalf of the U.S. government, the Department of Justice must obtain permission for a DOJ official to enter the foreign country on business. Since Treaties, MLATS and the other authorizing documents are made between the Department of State and the other country, DOJ submits the request to the U.S. State Department. The State Department

1 reviews the request and—if it falls within the allowable terms and conditions of treaties  
2 and MLATS between the foreign country and the U.S.—forwards the request to that  
3 foreign country. The foreign country then reviews the request and determines whether  
4 the requested travel is allowed under its laws as well as what that country's  
5 responsibilities are in assisting in the matter.

6 Sometimes AUSAs are not allowed into other foreign countries to conduct the  
7 business. In that case, the foreign country's government conducts the business on behalf  
8 of the U.S. And, *vice versa*, it occurs when AUSAs handle extradition matters in our  
9 Courts for foreign countries or when AUSAs handle Letters Rogatory for a foreign  
10 government pursuant to an MLAT request.

11 This case involves the undersigned AUSA traveling from the U.S. into Canada for  
12 the deposition, taken pursuant to the Rules on Judicial Assistance Matters.

13 The undersigned, through DOJ, submits a travel application to the U.S. State  
14 Department in Washington, D.C. The application must include (1) the specific date,  
15 place and time of the legal proceeding; (2) the name, title and contact information of all  
16 U.S. law enforcement and government officials who will attend; (3) the name, title and  
17 contact information of all Canadian officials who may be present as well as a summary of  
18 the intended legal process and other information. *This information is required by*  
19 *Canada.*

20 Once the application is complete, the State Department submits it to a Canadian  
21 governmental counterpart, the Canadian Department of Foreign Affairs and International  
22 Trade (DFAIT), in Ottawa, Ontario. The State Department and DFAIT require a lead  
23 time of 21 working days for their review, confirmation, and approval of my request to  
24 come into Canada and perform legal work on behalf of the U.S. government.

25 Therefore, I cannot submit the application to DOJ until I have a specific date and  
26 time from the witness and his counsel. Once I have that information, I will submit my  
27 application to DOJ, which will review it and transmit it to the State Department. Once  
28

1 State approves it, State will transmit it to Ottawa which will approve (or not) within 21  
2 working days.

3 Since the delay is not attributable to obtaining DOJ approval, but is a function of  
4 the process of obtaining Canadian approval, the government asks this Court to order a  
5 Rule 15 Rule Deposition of Witness Timothy Smith in this matter.

6 DATED this 11th day of June, 2009.

7  
8 Respectfully submitted,

9 JEFFREY C. SULLIVAN  
10 United States Attorney

11 s/ Susan M. Roe  
12 SUSAN M. ROE  
13 Assistant United States Attorney  
14 WSBA #13000  
15 United States Attorney's Office  
16 700 Stewart, Suite 5220  
17 Seattle, WA 98101  
18 Telephone: (206) 553-1077  
19 Fax: (206) 553-4440  
20 E-mail: susan.roe@usdoj.gov

21 s/ Roger S. Rogoff  
22 ROGER S. ROGOFF  
23 Assistant United States Attorney  
24 WSBA #23362  
25 United States Attorney's Office  
26 700 Stewart Street, Suite 5220  
27 Seattle, Washington 98101-1271  
28 Telephone: (206) 553-4330  
Fax: (206) 553-4440  
E-mail: Roger.Rogoff@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2009 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

s/Lindsay Erickson

LINDSAY ERICKSON

Legal Assistant

United States Attorney's Office

700 Stewart Street, Suite 5220

Seattle, Washington 98101-1271

Phone: (206) 553-4377

Fax: (206) 553-4440

E-mail: Lindsay.Erickson@usdoj.gov